

MORRISON & FOERSTER

SAN FRANCISCO
LOS ANGELES
SACRAMENTO
ORANGE COUNTY
PALO ALTO
WALNUT CREEK
SEATTLE

ATTORNEYS AT LAW

2000 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006-1888
TELEPHONE (202) 887-1500
TELEFACSIMILE (202) 887-0763
TELEX 90-4030 MRSN FOERS WSH

NEW YORK
DENVER
LONDON
BRUSSELS
HONG KONG
TOKYO

DIRECT DIAL NUMBER

May 26, 1995

DOCKET FILE COPY ORIGINAL

(202) 887-8745

Bruce Romano
Deputy Chief, Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W. (Room 536)
Washington, D.C. 20554

RECEIVED

MAY 26 1995

FEDERAL COMMUNICATIONS COMMISSION
U.S. DEPARTMENT OF JUSTICE

Re: Review of the Prime Time Access Rule
MM Docket No. 94-123

Bruce
Dear Mr. Romano:

Enclosed please find a computer disk containing the data added by the Coalition's economic consultants in their critique of the empirical analysis contained in the LECG report. This data is being provided to the Commission pursuant to an agreement among the parties and subject to the protections outlined in my letter of April 19, 1995, to Roy Stewart. A copy of that letter is attached for your convenience.

Please call if you have any questions.

Sincerely,

Diane S. Killory
Diane S. Killory
Counsel for the Coalition
to Enhance Diversity

Enclosures

cc: William F. Caton (w/o enc.)
Roy Stewart (w/o enc.)
Renee Licht (w/o enc.)
Douglas Webbink (w/o enc.)
Ellen S. Agress (w/o enc.)
Sam Antar (w/o enc.)
David L. Donovan (w/o enc.)
Mark W. Johnson (w/o enc.)
George Shapiro (w/o enc.)
Frank Wiggins (w/o enc.)

No. of Copies rec'd 0
List A B C D E

MORRISON & FOERSTER

SAN FRANCISCO
LOS ANGELES
SACRAMENTO
ORANGE COUNTY
PALO ALTO
WALNUT CREEK
SEATTLE

ATTORNEYS AT LAW

2000 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006-1888
TELEPHONE (202) 887-1500
TELEFACSIMILE (202) 887-0763
TELEX 90-4030 MRSN FOERS WSH

NEW YORK
DENVER
LONDON
BRUSSELS
HONG KONG
TOKYO

DIRECT DIAL NUMBER

April 19, 1995

RECEIVED (202) 887-8745

MAY 26 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Roy Stewart
Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Review of The Prime Time Access Rule
MM Docket No. 94-123

Dear Mr. Stewart:

This letter summarizes the understanding that the parties have reached relating to the Coalition's motion for the production of certain data. As you know, Bradley Lui of my firm and I met with you in your office on March 17, 1995. Also present were Renee Licht, Douglas Webbink, and Bruce Romano from the Bureau; David Donovan, for the Association of Independent Television Stations ("INTV"); George Shapiro and Marilyn Sonn, for Viacom; Frank Wiggins for King World; Mark Johnson for CBS; Sam Antar for Capital Cities/ABC (by telephone); and Ellen Agress for NBC (by telephone). We discussed the motion of the Coalition to Enhance Diversity ("Coalition") for the production of certain data in connection with the Commission's review of the Prime Time Access Rule.

As a result of our meeting, the parties agreed amongst themselves that the data used by the Law and Economics Consulting Group (in its ratings analysis based upon Arbitron reports and its financial analysis based on the NAB/BCFM financial reports) would be made available to all parties through the Commission, subject to security safeguards to prevent copying of the data. It was further agreed that the LECG data would be available to any party at the Commission's offices in Washington and San Francisco.

MORRISON & FOERSTER

Roy Stewart
April 19, 1995
Page Two

RECEIVED
MAY 26 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Subsequent to that meeting, I have had further discussions with David Donovan concerning the LECG data and certain data possessed by one of the Coalition's members. As a result of those discussions, the Coalition will make available through the Commission the data underlying the April 1994 position paper produced by Coalition member Walt Disney. We have also agreed that the following procedures will govern access to data submitted in this proceeding:

1. The Coalition's economic consultants (along with their research assistants) who will be accessing the LECG data will provide to counsel for INTV affidavits swearing that they will not copy the LECG data (and, indeed, have done so). INTV, King World, and Viacom will provide to counsel for the Coalition the same affidavits from all persons employed or retained by any of them who will be accessing the Coalition's data.
2. An analyst employed by Morrison & Foerster will review the printouts produced by the Coalition's economic consultants at the San Francisco FCC field office and their possessions to ensure that the raw LECG data has not been copied by the Coalition's economic consultants. This analyst will have sufficient background in computers and databases to recognize whether such copying has been performed. The analyst will be screened from any other work on this matter through an ethical wall.
3. In the event that it can be shown beyond doubt that either the Coalition's or INTV's economic consultants have copied and disclosed the databases, the party whose consultants committed such copying or disclosure will withdraw that portion of such party's pleading or reports submitted to the Commission that rely on a review and analysis of the databases. Each party accessing the databases shall also acknowledge that in the event of such copying or disclosure they may be subject to sanction under the Commission's rules.

MORRISON & FOERSTER

Roy Stewart
April 19, 1995
Page Three

4. Counsel for each party accessing the databases shall submit to counsel for each party whose database is being accessed a letter acknowledging that the persons accessing the databases have been retained by such party and are acting under the direction of such counsel.
5. In the event that any of the databases are copied or disclosed, the parties reserve their rights to pursue any remedies available under applicable state or federal law.

Representatives of INTV, King World, and Viacom have reviewed this letter and agreed that it accurately reflects our understanding. If you have any questions, please call.

Sincerely,



Diane S. Killory
Counsel for the
Coalition to Enhance Diversity

Enclosures

cc: William F. Caton
Michael Katz
Renee Licht
Douglas Webbink
Bruce Romano
Ellen S. Agress
Sam Antar
David L. Donovan
Mark W. Johnson
George Shapiro
Frank Wiggins